

1 **BEFORE THE ARIZONA MEDICAL BOARD**

2 In the Matter of

3 **GARY L. HENDERSON, M.D.**

4 Holder of License No. 5029
5 For the Practice of Allopathic Medicine
6 In the State of Arizona.

Board Case No. MD-09-0935A

**FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER**

(Letter of Reprimand)

7 The Arizona Medical Board ("Board") considered this matter at its public meeting
8 on April 14, 2010. Gary L. Henderson, M.D., ("Respondent") appeared before the Board
9 with legal counsel Tom Slutes for a formal interview pursuant to the authority vested in
10 the Board by A.R.S. § 32-1451(H). The Board voted to issue Findings of Fact,
11 Conclusions of Law and Order after due consideration of the facts and law applicable to
12 this matter.

13 **FINDINGS OF FACT**

14 1. The Board is the duly constituted authority for the regulation and control of
15 the practice of allopathic medicine in the State of Arizona.

16 2. Respondent is the holder of License No. 5029 for the practice of allopathic
17 medicine in the State of Arizona.

18 3. The Board initiated case number MD-09-0935A after receiving a complaint
19 regarding Respondent's care and treatment of a 62 year-old female patient ("MM")
20 alleging failure to appropriately inform MM of a surgical procedure, failure to appropriately
21 perform a surgical procedure, and failure to perform appropriate follow up care and
22 treatment.

23 4. On May 21, 2009, MM presented to Respondent due to an abnormal
24 mammogram that revealed a density in the upper outer quadrant of the left breast.
25 Respondent documented a discussion with MM regarding a fine needle aspiration to be

1 performed by radiology. There was no mention of sentinel node biopsy or the need for
2 radiation therapy if lumpectomy with axillary sampling were selected.

3 5. On May 27, 2009, Respondent performed what operative notes described
4 as a lumpectomy with axillary dissection for a 2cm invasive ductal carcinoma that was
5 located 8cm from the nipple. The hospital consent form signed by MM authorized needle
6 localization, but did not mention lumpectomy or axillary dissection.

7 6. A passive Penrose drain was placed in the lumpectomy cavity. On
8 postoperative day two, Respondent inspected the surgical site and four days later the
9 Penrose drain was removed. MM developed a wound infection in the lumpectomy cavity
10 and was placed on Levaquin.

11 7. On July 6, 2009, MM was evaluated by a breast surgeon at the Arizona
12 Cancer Center where a breast exam revealed an incision healed by secondary intention.
13 Diffuse edema was present along with marked distortion of the surgical scar and partial
14 mastectomy defect. MM underwent scar excision, local soft tissue rearrangement, and
15 reconstruction of the nipple areolar complex. In September 2009, MM was still receiving
16 care from the Arizona Cancer Center.

17 8. The Medical Consultant (MC) found that Respondent failed to perform a
18 sentinel lymph node biopsy for staging the axilla in a patient diagnosed with breast
19 cancer. In addition, the MC found that Respondent failed to document preoperative
20 consultation information at the time of MM's visit, failed to document a specific operative
21 plan or a witnessed informed consent for the breast cancer operation, and failed to have
22 the hospital consent form correctly reflect the planned surgical procedure. The MC also
23 noted that Penrose drains are not recommended for lumpectomies.

9. At the Formal Interview Respondent admitted that he fell below the standard of care in treating NM by failing to perform a sentinel lymph node biopsy for staging the axillary lymph nodes for metastatic disease.

10. The standard of care requires a physician to perform sentinel lymph node biopsy to assess axillary lymph nodes for metastatic disease.

11. Respondent deviated from the standard of care by failing to perform a sentinel lymph node biopsy for staging the axilla in a patient diagnosed with breast cancer.

12. The standard of care requires a physician to complete a surgical consent form that describes the actual surgical procedure to be performed.

13. Respondent deviated from the standard of care by failing to complete a surgical consent form that described the actual surgical procedure that was to be performed.

CONCLUSIONS OF LAW

1. The Arizona Medical Board possesses jurisdiction over the subject matter hereof and over Respondent.

2. The Board has received substantial evidence supporting the Findings of Fact described above and said findings constitute unprofessional conduct or other grounds for the Board to take disciplinary action.

3. The conduct and circumstances described above constitute unprofessional conduct pursuant to A.R.S. § 32-1401(27)(e) (“(f)ailing or refusing to maintain adequate records on a patient”) and § 32-1401(27)(q) (“[a]ny conduct that is or might be harmful or dangerous to the health of the patient or the public.”)

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law,

1 IT IS HEREBY ORDERED:

- 2 1. Respondent is issued a Letter of Reprimand.
- 3 2. Within six months of the effective date of this Order, Respondent
- 4 shall complete the PACE medical recordkeeping course. The CME
- 5 hours shall be in addition to the hours required for biennial
- 6 renewal of licensure. Respondent shall provide Board staff with
- 7 proof completion.
- 8 3. The Board retains jurisdiction and may initiate new action based
- 9 upon any violation of this Order.

10

11 **RIGHT TO PETITION FOR REHEARING OR REVIEW**

12 Respondent is hereby notified that he has the right to petition for a rehearing or

13 review. The petition for rehearing or review must be filed with the Board's Executive

14 Director within thirty (30) days after service of this Order. A.R.S. § 41-1092.09(B). The

15 petition for rehearing or review must set forth legally sufficient reasons for granting a

16 rehearing or review. A.A.C. R4-16-103. Service of this order is effective five (5) days

17 after date of mailing. A.R.S. § 41-1092.09(C). If a petition for rehearing or review is not

18 filed, the Board's Order becomes effective thirty-five (35) days after it is mailed to

19 Respondent.

20 Respondent is further notified that the filing of a motion for rehearing or review is

21 required to preserve any rights of appeal to the Superior Court.

22 DATED this 27th day of March, 2010.

23

24

25



THE ARIZONA MEDICAL BOARD

By Amala Bell

for Lisa S. Wynn
Executive Director

ORIGINAL of the foregoing filed this:

10th day of June with:

Arizona Medical Board
9545 East Doubletree Ranch Road
Scottsdale, Arizona 85258

Executed copy of the foregoing
mailed by U.S. Mail this:

10th day of June, 2010 to:

Tom Slutes, Esq.
Slutes, Sakrison & Rogers, PC
4801 E. Broadway Boulevard, Suite 301
Tucson, AZ 85711

Chris Bump
Board Staff